

the Specification as filed July 26, 2001. In this connection, it is to be specifically noted that there was no application or document examined by the Examiner which contained eleven claims. Thus the statement contained in the action by the Office of the LIE that amendment “did not contain all the claims” was inconsistent with the requirements of the First Office Action. As such, the rejection of the amendment by the Office of the LIE was also wrong.

3. That the amendment filed by the Applicant in response to the First Office Action was a correct response to the subject Office Action. The reason for the rejection of the amendment presented by the Office of the LIE that the response to the Office Action was Non-Compliant because the Amendment did not contain all of the claims was erroneous. Moreover, although Applicant’s response to the Notice of Non-Compliant Amendment correctly pointed out that the Office of the LIE’s non-acceptance of the response to the First Office Action was incompatible with the Examiner’s action the response was again rejected by the Office of the LIE without considering the substance of applicant’s response.

4. That based upon a review of the application it is obvious that the Examiner and the Office of the LIE had reviewed different documents. As a consequence, the Office of the LIE determined that Applicant’s response to the Office Action was non-responsive to the Office Action when, in fact, the Applicant’s response was correct and responsive to the Specification and Claims examined by the Examiner.

5. That applicant’s response to the Office Action was responsive and Compliant to the Office Action presented by the Examiner. However, upon review applicant now realizes that the Office of the LIE and the Examiner were discussing two different documents in their communications with applicant’s counsel. The Examiner, it appears, examined claims related to the application filed on July 26, 2001. On the other hand, the

Office of the LIE rejected the filing submitted by applicant based upon a review of a pleading filed . The July 26, 2001 pleading contained eight (8) claims. The document on which the Office of the LIE based its rejection contained eleven (11) claims. For reference purposes both filings are duplicated and attached hereto. Hence, the Office of the LIE's rejection of the amendment on the grounds that "all claims had not been included in the amendment," is incorrect since all of the claims examined by the Examiner were fully responded to in the response to the First Office Action and the reply to the Notice of Non-Compliant Amendment.

6. That the confusion between the actions of the Office of the LIE and the Examiner has caused the unwarranted and erroneous Abandonment of the Application. In other words, Plaintiff was put into an untenable position by the separate requirements of the Examiner, who examined and referred to eight (8) claims in his Office Action; the Office of the LIE rejected the reply to the Office Action because it did not include an amendment to eleven (11) claims.

7. The substance and language of the claims 1 to 11 which the Office of the LIE refers to in its Notice of Non-Complaint Amendment are not identical to the substance and language of the claims examined by the Examiner.

8. That as a result of the action taken by the Office of the LIE in the matter the application was deemed abandoned by the Office. Applicant has been forced to file a Petition for Reinstatement of the application.

WHEREFORE Applicant respectfully requests that the Office of the LIE review its non-acceptance of the amendment dated in light of the fact that Applicant's responses to the Office Action were consistent with the Examiner's instructions in the First Office Action. In